

REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

~ APPEALS ~

Friday, April 21, 2023
9:00 a.m.
Commission En Banc Courtroom
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

MINUTES

Members present: Chairman Jordan Russell, Commissioner Megan Tilly, and Commissioner Scott Biggs.

Staff present to support the Commission: Alexander Watkins, WCC; Lindsey Christopher, WCC; and Monica Pack, WCC.

STATEMENT OF OKLAHOMA OPEN MEETING LAW COMPLIANCE

Chairman Russell stated the administrative meeting was being held in compliance with the Open Meetings Act.

CALL TO ORDER **Presiding Appellate Officer, Commissioner Tilly**

Call to order 9:00 a.m. by Commissioner Tilly, Presiding Appellate Officer.

ROLL CALL **Presiding Appellate Officer, Commissioner Tilly**

After the roll call was taken, Commissioner Tilly announced the presence of a Quorum.

A. MINUTES:

- The drafted Minutes of the Regular Appeals Meeting of March 17, 2023, were considered for approval.

Motion: Commissioner Biggs made a motion to approve the Regular Appeals Meeting of March 17, 2023, minutes.

Second: Commissioner Tilly

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: MINUTES APPROVED

B. Appeal Hearings before the Commission En Banc from Orders Issued by the Commission's Administrative Law Judges

1. Jerry Green v. MITF, File #CM3F-2015-07692A

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan Jones appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to affirm the Administrative Law Judge's order and issue a supplemental order at a future date.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

2. David Dowell v. MITF, File #CM3F-2021-06098K

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Ray Lahann appeared for the Claimant and Jordan Ensley appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

3. Retha Stefanek v. Macy's Corporate Services, Inc. and Macy's, Inc., File #CM3-2021-07209W

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. John R. Evans Jr. appeared for the Claimant and Chad R. Whitten appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

4. Vanessa Herrington v. OK Foods Inc., #CM3-2022-02360N

Respondent filed an appeal from the order issued by Administrative Law Judge Blodgett. Pamla Cornett appeared for the Claimant and R. Jay McAtee appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

5. Virgil Breeze v. Premium Transportation Group Inc. and XL Insurance America Inc., File #CM3-2021-06787E

Both parties filed an appeal from the order issued by Administrative Law Judge Inhofe. Daniel J. Talbot appeared for the Claimant and R. Jay McAtee appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: TAKEN UNDER ADVISEMENT

6. Patricia Troxell v. MITF, File #CM3F-2017-00855A

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. D. April Spurgeon appeared for the Claimant and Michael A. Fagan is the attorney of record for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to take preliminary action to draft an order directing the Administrative Law Judge to appoint an independent nurse case manager to accompany Claimant to the physician's examination.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: PRELIMINARY ACTION TAKEN

7. **James Lindsey v. Western Equipment LLC and Old Glory Insurance Co., File #CM3-2021-01993A**

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Daniel M. Davis appeared for the Claimant and Kelley Bodell appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

8. **Terry Smith v. The Fairmont Skilled Nursing and Therapy and Amity Care LLC (OWN RISK), File #CM3-2020-03360A**

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Rodney Palmer is the attorney of record for the Claimant and Julie Thompson Weller is the attorney of record for the Respondent.

STRICKEN

9. **Jerry Holman v. Standard Masonry LLC and Compsource Mutual Insurance Company, File #CM3-2021-06986K**

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Randy D. Edmonson appeared for the Claimant and Warren E. Mouldoux III appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

C. Commission Consideration of Adoption of Final Orders in the Following Cases:

1. Harmony Hill v. Tulsa Public Schools, File #CM3-2016-01538H

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Esther M. Sanders and David P. Reid are the attorneys of record for the Claimant. Catherine M. Bashaw is the attorney of record for the Respondent.

The Commission will considered adoption of a proposed order remanding by agreement of the parties.

Motion: Commissioner Biggs moved to adopt the order as proposed.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

2. Norma Chavez v. Lopez Foods Inc. (OWN RISK), File #CM3A-2017-07276R

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. W. Wicker and James G. Devinney appeared for the Claimant. Norman Lemonik appeared for the Respondent.

This case came on for Oral Argument on August 26, 2022. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to affirm the decision of the Administrative Law Judge's Order and instructed the law clerk or other staff member to draft a proposed order with finding of facts and conclusions of law, to be considered for continued action at a future meeting.

Motion: Chairman Russell moved to approve the order as proposed.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

3. Robert Page v. City of Tulsa (OWN RISK #10435), File #CM3-2020-06114Y

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Micah Felton appeared for the Claimant and Cyrus Nathaniel Lawyer appeared record for the Respondent.

This case came on for Oral Argument on September 16, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to adopt the order as proposed.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

4. Nancy Gonzalez-Rubio v. Pacific Painting Co. Inc. and Continental National Indemnity Co., File #CM3A-2019-04881X

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Milly Daniels appeared for the Claimant and Nicole S. Bryant appeared for the Respondent.

This case came on for Oral Argument on September 16, 2022. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take preliminary action to vacate and remand the decision of the Administrative Law Judge's Order and instructed the law clerk or other staff member to draft a proposed order with finding of facts and conclusions of law, to be considered for continued action at a future meeting.

Motion: Commissioner Biggs moved to adopt the order as proposed.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

5. Allan Hare v. MITF, File #CM3F-2019-04761J

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Ray Lahann is the attorney of record for the Claimant and Stefan Wenzel is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

6. James Crittenden Jr. v. MITF, File #CM3F-2019-07602A

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. McCaffrey & Associates are the attorneys of record for the Claimant and Michael A. Fagan is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

7. Allen Schuster v. Grady Memorial Hospital (OWN RISK), File #CM3-2021-00425R

Respondent filed an appeal from the order issued by Administrative Law Judge Blodgett. Claimant represented himself, pro se, and Donald A. Bullard appeared for the Respondent.

This case came on for Oral Argument on January 27, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, Commission Tilly moved to take preliminary action to affirm the order in-part and overrule the order in-part, specifically, to affirm the findings of a compensable injury to the thoracic back; affirm the award of TTD; overrule the finding of compensable injury to the neck; and remand the matter to the ALJ on the appointment of an IME for psych overlay.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

8. Jimmie Wilson v. MITF, File #CM3F-2017-01505K

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Micah Felton appeared for the Claimant and Stefan Wenzel appeared for the Respondent.

This case came on for Oral Argument on January 27, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission Tilly moved to take preliminary action to affirm the administrative law judge's order and find that it's neither contrary to law nor against the clear weight of the evidence.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

9. James Randy Westlake v. MITF, File #CM3F-2022-01067X

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Ray Lahann is the attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

This case came on for Oral Argument on March 17, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

10. Michael Lewis v. H3S Investments, LLC and Stonetrust Commercial Ins. Co., #CM3-2022-00255Y

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Darrel Paul appeared for the Claimant and Jennifer Finley appeared for the Respondent.

This case came on for Oral Argument on March 17, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

ADJOURNMENT

Motion: Commissioner Biggs moved to adjourn the meeting at approximately 2:24 p.m.

Second: Chairman Russell.

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: MEETING ADJOURNED.